

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

MARTIN J. MOFFETT,

Plaintiff,

v.

THE AMERICAN COAL COMPANY,

Defendant.

Case No. 06-cv-4082-JPG

ORDER

This matter is before the Court on plaintiff Martin J. Moffett's motion to dismiss this case without prejudice (Doc. 10), to which defendant American Coal Company ("American Coal") has responded (Doc. 13) and Moffett replied (Doc. 14).

In an October 19, 2006, order (Doc. 15), the Court announced that as a condition of granting this motion, the Court would require Moffett to pay defendant American Coal's expenses in this case, including attorney's fees, to the extent that the work done could not be used in future litigation. It gave Moffett an opportunity to avoid that condition in either of two ways if he found it too onerous. He could either (1) file an amended motion requesting that the dismissal be with prejudice, in which case the Court would dismiss the case with prejudice and without imposing the aforementioned condition, or (2) file a motion to withdraw his motion to dismiss, in which case this matter would proceed on schedule.

In a January 9, 2006, order, the Court determined that American Coal's relevant costs amounted to \$7,152.00, and gave Moffett five days to avoid the condition that came along with dismissal without prejudice. Within those five days, Moffett filed neither an amended motion requesting dismissal with prejudice nor a motion to withdraw his motion to dismiss. The Court construes Moffett's silence as an acceptance of the Court-imposed condition of dismissal

without prejudice.

Accordingly, the Court **GRANTS** Moffett's motion to dismiss this case without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) (Doc. 10), **DISMISSES** this case **without prejudice**, **ORDERS** that Moffett shall pay American Coal's costs in the amount of \$7,152.00, and **DIRECTS** the Clerk of Court to enter judgment accordingly.

IT IS SO ORDERED.

DATED: January 22, 2007

s/ J. Phil Gilbert

**J. PHIL GILBERT
DISTRICT JUDGE**